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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,987	04/12/2001	Rene Joachim Buter	F3259(C)	2082

201 7590 04/23/2003

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PATENT DEPARTMENT
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EXAMINER

YEUNG, GEORGE CHAN PUI

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/833,987

Applicant(s)

Buter et al

Examiner

George C. Young

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on Jan. 21, 2003
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-12 ☒ are pending in the application.
- Of the above claim(s) 7-12 ☒ are withdrawn from consideration.
- ☐ Claim(s) non-elected inventions ☐ is/are allowed.
- ☒ Claim(s) 1-6 ☒ are rejected.
- ☐ Claim(s) ☐ is/are objected to.
- ☐ Claim(s) ☐ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

DETAILED ACTION

Applicants' election with traverse of the invention of Group I (claims 1-6) in Paper No. 6 is acknowledged. The traversal is on the ground that it would not appear to be unduly burdensome for the claims of Groups I and II to be examined together. This is not found persuasive because the search and examination of the two inventions would not be coextensive. It is clear from reading the scope of process claims 1-6 that the Group I process does not include the same or corresponding special technical features such as each entry port is connected to an exit port by way of a conduit running through the nozzle, each sub-conduit being connected to an exit port, each sub-conduit forming a semi-annular chamber around a central conduit, in a second section the central conduit and semi-annular chambers from the first section are connected to a plurality of further sub-conduits, and the exit ports comprise a symmetrical array of substantially rectangular openings radially arranged about a central point as set forth in the Group II apparatus. Moreover, it is deemed that the apparatus of Group II as claimed can be used to practice another and materially different process, e.g., for use in extruding a non-edible material such as a thermoplastic material. Accordingly, the issues raised in the examination of process claims are divergent from those raised in the examination of apparatus claims. While there may be some overlap in the searches of the two inventions, there is no reason to believe that the searches would be identical. Therefore, based on the additional work involved in searching and examining both distinct inventions together, restriction of the distinct inventions is clearly proper.

The requirement is still deemed proper and is therefore made FINAL.

The specification is objected to because of the following informality:

The heading "Detailed description" appearing at page 11, line 16 is improper and it should be changed to read -- Brief Description of the Drawings --.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention for the following reasons:

1. While the preamble of claim 1 calls for a process for extruding ice cream, claim 1 fails to recite a positive manipulative step of extruding ice cream. Thus claim 1 is indefinite and incomplete.

2. It is not clear whether or not the term "a nozzle" recited in claims 1 and 6, lines 2 and 4, respectively, refers to an extrusion nozzle.

3. The limitations "divided" and "extrusion" recited in claims 1 and 6 are improper since they fail to impart positive manipulative steps to the process claims. The change of these limitations to -- dividing -- and -- extruding -- would obviate this rejection.

4. While the preamble of claim 6 calls for a method of dispensing fresh ice cream, claim 6 fails to recite a positive manipulative step of dispensing fresh ice cream. Thus claim 6 is indefinite and incomplete.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1761

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hershey (U.S. Patent 2,282,313) or Gundlach et al (U.S. Patent 2,284,651).

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cammack (U.S. Patent 3,344,751), Jernigan (U.S. Patent 3,724,984) or Nelson et al (German patent 1 236 535).


The Fazio et al patent is cited to show a method for producing a frozen novelty.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Yeung whose telephone number is (703) 308-3848. The examiner can normally be reached on Monday-Friday from 10:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

G. C. Yeung/mn
April 22, 2003


GEORGE C. YEUNG
PRIMARY EXAMINER